

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective December 3, 2002 on the grounds that his work-related condition had ceased without residuals; and (2) whether appellant established that he had a continuing disability on and after December 3, 2002 related to the accepted thoracic sprain. On appeal, appellant asserts that the Office wrongly terminated his compensation benefits as there was an outstanding conflict of medical opinion between his attending physicians and a second opinion physician.

FACTUAL HISTORY

The Office accepted that on April 30, 2001 appellant, then a 55-year-old computer program analyst, sustained a thoracic strain in the performance of duty due to using a chair with no back support and an improperly aligned keyboard shelf. He received wage-loss compensation for intermittent absences. Appellant retired from the employing establishment on April 19, 2002.

Appellant was followed initially by Dr. John M. Sullivan, an attending Board-certified family practitioner. In a June 4, 2001 report, he noted that physical therapy and chiropractic manipulation had greatly improved appellant's back pain.¹ Appellant then developed numbness and paresthesias in the left side of his face and in his left arm and leg. He sought additional treatment. In a July 12, 2001 report, Dr. Edwin A. Aquino, an attending physiatrist, noted nonanatomic sensory deficits in the left upper extremity and paracervical spasm. Dr. Aquino diagnosed cervicodorsal and lumbosacral strains with radiculopathy. In an August 21, 2001 report, Dr. Y. Swamy Venkatesh, an attending Board-certified neurologist, provided a history of injury and treatment, noting the recent onset of numbness and paresthesias. As somatosensory evoked potential studies performed on October 26, 2001 were normal, Dr. Venkatesh opined in a January 22, 2002 report, that appellant's "hemi body numbness" was of an "unclear etiology."

Dr. Sullivan submitted periodic reports through May 3, 2002, noting appellant's continued left-sided numbness and paresthesias, possibly due to nerve entrapment or peripheral neuralgia. He noted on April 5, 2002 that "examination fail[ed] to reveal any particular physical abnormality."²

On September 24, 2002 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Perry Eagle, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Eagle submitted an October 24, 2002 report reviewing the medical record and statement of accepted facts. On examination, Dr. Eagle found apparently restricted thoracic and lumbar spinal motion but no paraspinal spasms or tenderness. Other than an absent right knee jerk reflex, the neurologic examination was normal. He obtained x-rays of the thoracic spine showing bridging anterior osteophytes "from the mid-thoracic region distally" and calcification in multiple discs. He diagnosed a possible history of thoracic strain and "arthritic change in the thoracic region" unrelated to the accepted injury. Dr. Eagle opined that the accepted thoracic strain had resolved because appellant's symptoms and findings were caused by an idiopathic arthritic process in the thoracic region.

¹ In a May 30, 2001 report, Dr. James L. Wharton, a chiropractor, diagnosed thoracic and sacral subluxations by x-rays he obtained on May 10, 2001. He noted treating the subluxations with chiropractic manual manipulation.

² Appellant's physicians ordered a variety of diagnostic tests. May 10, 2001 x-rays showed moderate hypertrophic spurring from T7-11. A June 21, 2001 computerized tomography (CT) scan of appellant's head was normal. July 13, 2001 x-rays showed mild degenerative disc disease in the cervical spine with mild neural foraminal encroachment on the right at C3-4. July 16, 2001 electrodiagnostic studies showed left L4 radiculopathy. A July 23, 2001 lumbar magnetic resonance imaging (MRI) scan showed a mild disc bulge at L4-5 with nerve root impingement. A September 21, 2001 brain MRI scan and January 22, 2002 head CT scan were normal. Appellant participated in physical therapy from June 2001 to November 2002.

By notice dated October 29, 2002, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that the accepted thoracic strain had ceased without residuals, based on Dr. Eagle's opinion. The Office afforded appellant 30 days to submit additional evidence.

Appellant responded by a November 12, 2002 letter, asserting that Dr. Eagle's opinion was insufficiently rationalized. He asserted that all the diagnosed conditions were caused by work factors on April 30, 2001. Appellant also contended that there was a conflict of medical opinion between his physicians and Dr. Eagle and submitted additional evidence.

In an October 25, 2002 report, Dr. Jonathan L. Costa, an attending Board-certified physiatrist, provided a history of injury and treatment. He related appellant's account that the "thoracic area [was] okay." On examination, Dr. Costa found decreased sensation on the left at C4-5 and in the entire trigeminal distribution, decreased right rotator cuff strength, tightness in the pectoralis muscles on the right, decreased sensation in the left lower extremities in the L3, L4 and L5 distributions and bilateral hamstring tightness. Dr. Costa diagnosed "[p]robable cervical myelopathy/stenosis," rule out spondylosis, possible "left functional thoracic outlet syndrome and component of left C4-5 radiculopathy," possible left piriformis syndrome, pericervical, periscapular and peripelvic myofascial syndromes, a possible loose connective tissue syndrome and doubtful vertebral artery insufficiency.

By decision dated December 3, 2002, the Office terminated appellant's compensation on the grounds that the accepted thoracic strain had resolved without residuals. The Office found that Dr. Eagle's report was entitled to the weight of the medical evidence as it was well rationalized and based on a complete history and statement of accepted facts. The Office also found that Dr. Costa provided insufficient rationale explaining how and why the accepted April 30, 2001 thoracic strain would continue to cause appellant's symptoms.

In a December 10, 2002 letter, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held July 21, 2004.³ At the hearing, appellant asserted that the reports of Drs. Aquino, Costa and Sullivan supported a causal relationship between the April 2001 thoracic sprain and his continuing condition. Appellant alleged that Dr. Eagle provided insufficient rationale to outweigh the opinion of his physicians. Alternatively, appellant asserted that there was a conflict of medical opinion between his physicians and Dr. Eagle. He submitted additional evidence.⁴

In a December 12, 2002 report, Dr. Costa noted that physical therapy decreased the areas of numbness and paresthesias but that a neurological workup was "completely negative."⁵ This

³ The Office originally scheduled the oral hearing for August 5, 2003 but granted a postponement due to the death of appellant's father.

⁴ Appellant also submitted copies of evidence previously of record and considered by the Office prior to issuance of the December 3, 2002 decision.

⁵ A November 26, 2002 cervical MRI scan showed mild central spondylosis at C3-4, C5-6 and C6-7 with mild to moderate nerve root canal stenosis. December 4, 2002 electrodiagnostic studies of the left upper and lower extremities was normal.

plus the fact that the symptoms can diminish with physical therapy leads one to the conclusion that the numbness is an unusual manifestation of his work-related injury.” Dr. Costa characterized appellant’s cervical hypermobility as a “loose-connective-tissue syndrome,” with excess movement of the cervical facets stimulating the sympathetic ganglia. Dr. Costa explained that the April 2001 injury “pushed him over the threshold for this pathological irritation to manifest itself clearly as frank numbness and tingling.” In periodic reports through July 8, 2004, Dr. Costa diagnosed cervical derangement and cervical stenosis with spasm at various levels from C3 to C7, cervical sprain symptoms and a possible migraine-like phenomenon.

In a January 6, 2003 report, Dr. Sullivan stated that the “exact cause of [appellant’s] impairment” had not yet been identified. He opined that appellant’s symptoms were “consistent with nerve impingement possibly secondary to muscle spasm very easily relating back to a work[-]related injury.” Dr. Sullivan stated that “with a reasonable degree of medical certainty ... [appellant’s] symptoms were caused in a yet undefined way by work[-]related factors.”

By decision dated and finalized November 2, 2004, an Office hearing representative affirmed the December 3, 2002 decision terminating appellant’s compensation benefits, finding that the accepted thoracic strain had resolved without residuals. The Office found that Dr. Costa and Dr. Sullivan did not provide a firm diagnosis for appellant’s symptoms or opine that he still exhibited residuals of the accepted thoracic strain. The Office further found that Dr. Eagle provided a well-rationalized report based on a complete background, attributing appellant’s symptoms to nonoccupational arthritis of the thoracic spine.

In an October 11, 2005 letter, appellant requested reconsideration. In a September 24, 2004 report, Dr. Costa stated an impression of “rule out cervical myelopathy or vertebral artery insufficiency,” noting that appellant’s symptoms were “out of proportion to what [one] would expect for his cervical and sacroiliac joint derangements.”

In a January 20, 2005 report, Dr. Everett C. Hills, an attending Board-certified physiatrist, provided a history of an occupational cervical sprain in 2001. On examination, Dr. Hills observed diminished pinprick sensation in the left calf with no other neurologic abnormalities. He diagnosed “C5-L4 sensory diminution, unclear etiology” and “history of work[-]related injury with cervical sprain/strain.” In an October 11, 2005 report, Dr. Hills noted appellant’s pain and paresthesias throughout the spine and the left side of his body. Dr. Hills opined that the etiology of appellant’s symptoms remained unclear and noted a “[t]horacic work[-]related injury, sprain/strain.”

In a March 17, 2005 report, Dr. Thomas Giammatteo, a chiropractor, discussed appellant’s symptoms but did not diagnose a spinal subluxation by x-ray.

By decision dated January 17, 2006, the Office affirmed the November 2, 2004 decision, finding that the Office properly terminated appellant’s compensation benefits on the grounds that the accepted April 30, 2001 thoracic strain ceased without residuals. The Office found that Dr. Eagle’s opinion continued to represent the weight of the medical evidence, as appellant’s physicians failed to present sufficient rationale to establish the presence of any residuals attributable to the accepted injury.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁶ Having determined that, an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁷

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁹

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a thoracic strain on April 30, 2001. Appellant was followed by Dr. Sullivan, an attending Board-certified family practitioner, who opined on June 4, 2001 that appellant's back pain had largely resolved with physical therapy and chiropractic manipulation. Following this report, appellant developed numbness and paresthesias in the left side of his body. Dr. Aquino, an attending physiatrist, diagnosed cervical and lumbar strains on July 12, 2001, but did not address the accepted thoracic sprain. Dr. Venkatesh, an attending Board-certified neurologist, opined on January 22, 2002 that appellant's numbness and paresthesias were due to an "unclear etiology." Dr. Sullivan opined on April 5, 2002 that there were no objective abnormalities on physical examination. Thus, appellant's physicians did not find objective abnormalities attributable to the accepted thoracic strain after June 4, 2001.

The Office referred appellant to Dr. Eagle, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Eagle submitted an October 24, 2002 report opining that appellant no longer had objective residuals of a thoracic strain. He attributed appellant's symptoms to nonoccupational arthritis of the thoracic spine, noting that the condition was unaffected by the thoracic strain. Based on this report, the Office issued an October 29, 2002 notice of proposed termination. In response, appellant submitted an October 25, 2002 report from Dr. Costa, an attending Board-certified physiatrist, who noted that appellant reported his "thoracic area [was] okay." Dr. Costa provided a variety of diagnoses related to the paraspinal musculature but did not find a thoracic strain. The Office then terminated appellant's compensation by a December 2, 2002 decision, on the grounds that the medical evidence established that the accepted thoracic strain had resolved without residuals.

⁶ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁷ *Id.*

⁸ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004).

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

The Board finds that Dr. Eagle's opinion represents the weight of the medical evidence as it is detailed, well rationalized and based on a complete factual and medical history.¹⁰ Also, appellant's physicians did not support a continuing condition related to the accepted injury. Dr. Sullivan opined that appellant's back pain had largely resolved as of June 4, 2001. Subsequent medical reports note no objective findings attributable to the thoracic strain. Thus, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.¹¹ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹² The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of the Office to disprove an employment relationship.¹³

ANALYSIS -- ISSUE 2

Appellant submitted additional medical evidence following the Office's December 3, 2002 decision terminating his compensation benefits. He asserted that these reports were sufficient to establish that he had continuing residuals of the April 30, 2001 thoracic strain on and after December 3, 2002.

In a December 12, 2002 report, Dr. Costa, an attending Board-certified physiatrist, stated that both appellant's neurological workup was "completely negative." Yet, he opined that the accepted injury aggravated a preexisting loose connective tissue syndrome, manifesting as numbness and tingling.¹⁴ The probative quality of Dr. Costa's opinion is diminished by its equivocal assertions.¹⁵

In a January 6, 2003 report, Dr. Sullivan, an attending Board-certified family practitioner, stated that the "exact cause of [appellant's] impairment" had not yet been identified but that it could be due to "nerve impingement possibly" due to muscle spasm "relating back to a work[-]related injury." Dr. Sullivan opined that appellant's "symptoms were caused in a yet

¹⁰ *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ *See Virginia Davis-Banks*, 44 ECAB 389 (1993); *see also Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

¹² *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹³ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁴ Dr. Costa's other reports through September 24, 2004 did not address causal relationship.

¹⁵ *See Ricky S. Storms*, 52 ECAB 349 (2001).

undefined way by work[-]related factors.” Thus, Dr. Sullivan stated both that he could not identify the cause of appellant’s symptoms and that they were caused by work factors. The speculative nature of Dr. Sullivan’s opinion greatly diminishes its probative value in establishing the claimed continuing disability.¹⁶

In a January 20 and October 11, 2005 reports, Dr. Hills, an attending Board-certified physiatrist, diagnosed “C5-L4 sensory diminution [of] unclear etiology.” He also noted, incorrectly, that appellant had a work-related cervical sprain. Thus, Dr. Hills stated that he could not identify the cause of appellant’s symptoms. His opinion is, therefore, of little value in establishing a causal relationship between the claimed period of continuing disability and the accepted injury. Also, Dr. Hills provided an inaccurate history of injury, further diminishing the probative value of his opinion.¹⁷

Dr. Giammatteo, a chiropractor, did not diagnose a spinal subluxation by x-ray. Therefore, he is not a physician under the Federal Employees’ Compensation Act for the purposes of this case and his opinion is of no probative value.¹⁸

The Board finds that appellant submitted insufficient rationalized medical evidence to establish a causal relationship between his condition on and after December 3, 2002 and the accepted April 30, 2001 thoracic strain. Therefore, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits on the grounds that the accepted thoracic sprain ceased without residuals. The Board further finds that appellant did not meet his burden of proof in establishing a continuing work-related disability on and after the termination of his compensation benefits on December 3, 2002.

¹⁶ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁷ *See John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ 5 U.S.C. § 8101(3), 20 C.F.R. § 10.311(a). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2006 is affirmed.

Issued: October 5, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board